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FEDERAL JUDGE SENTENCES FORMER AOL EMPLOYEE
TO 15 MONTHS IMPRISONMENT FOR SCHEME TO STEAL
AOL CUSTOMER LIST SOLD TO SPAMMERS

DAVID N. KELLEY, the United States Attorney for the Southern District of New York, announced that JASON SMATHERS, a software engineer formerly employed at America On Line ("AOL"), was sentenced today in Manhattan by Federal District Judge ALVIN K. HELLERSTEIN to 15 months in prison for SMATHERS's conviction on conspiracy and theft charges stemming from his scheme to steal AOL's entire subscriber list and to use the list to send massive amounts of unsolicited commercial e-mails -- also known as "SPAM" -- to millions of AOL's customers. According to Mr. KELLEY, this case is one of the first in the nation prosecuted under the recently enacted CAN-SPAM law. SMATHERS was sentenced by Judge HELLERSTEIN on federal felony charges filed previously in both New York and Virginia.

As charged in the previously filed criminal Complaint, SMATHERS, using his skills as a computer engineer and his inside knowledge of AOL's computer system, misappropriated a list of 92

million AOL customer account "screen names" in May 2003. The Complaint further alleged that in May 2003, a co-conspirator purchased the list from SMATHERS and then used the list to promote his own internet gambling operation. The co-conspirator also allegedly sold the list to other SPAMmers for \$52,000.

According to the Complaint, AOL, one of the world's leading internet service providers with a customer base of approximately 30 million subscribers, maintained its customer list in a database referred to as the "Data Warehouse," stationed in a secure computerized location in Dulles, Virginia. As described in the Complaint, access to that database was limited by AOL to a small number of AOL employees. According to the Complaint, SMATHERS worked in AOL's Dulles offices, but was not authorized to access or copy the customer information in the Data Warehouse in April and May 2003, when he stole the list. However, as alleged, in April and May 2003 SMATHERS, using the computerized employee identification code of another AOL employee, improperly gained access to the Data Warehouse database and began assembling a complete list of AOL's customer account screen names and related zip codes, credit card types (but no credit card numbers), and telephone numbers of AOL customers. The Complaint noted that there was no evidence that anyone gained access to or stole customers' credit card account numbers which AOL stores in a separate, highly secure data location apart from the Data Warehouse.

As alleged in the Complaint, a search of SMATHERS's work computer conducted in May 2004 revealed that in approximately April 2003 SMATHERS and another individual discussed various techniques by which to SPAM AOL customers, as well as the large profits that could be made from SPAMming.

As also charged in the Complaint and in criminal Informations subsequently filed in New York and Virginia, other co-conspirators of SMATHERS used the list to send millions of unsolicited commercial electronic mail transmissions (SPAM) to AOL's customers worldwide (including New York) in 2004 for purposes of marketing herbal penile enlargement pills. The alleged SPAMming occurred after the new CAN-SPAM law went into effect on January 1, 2004.

SMATHERS pled guilty on February 4, 2005, to one count of conspiracy to traffic in stolen property and to violate the anti-SPAM law and one count of trafficking in stolen property. The latter charge for trafficking in stolen property was originally filed by the United States Attorney for the Eastern District of Virginia, which is the federal District where AOL's offices are located and the place from which SMATHERS stole the list. At his February guilty plea, SMATHERS admitted he stole the list of AOL customer e-mail accounts and sold it to SPAMmers after conspiring to do so, thus admitting the crimes charged in both federal courts.

SMATHERS, 24, resides in West Virginia.

Mr. KELLEY praised the outstanding efforts of the United States Secret Service, New York Electronic Crimes Task Force, Washington, D.C. Electronic Crimes Task Force, and Las Vegas Electronic Crimes Task Force on this investigation. Mr. KELLEY thanked the United States Attorney for the Eastern District of Virginia, PAUL J. McNULTY, and the Computer Crime and Intellectual Property Section of the Department of Justice in Washington, D.C. ("CCIPS") for their cooperative efforts and support in connection with this investigation and prosecution.

Assistant United States Attorney DAVID SIEGAL is in charge of the prosecution.

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